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REDLINE RECOVERY SERVICES, LLC
7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10

11 TERESA PARKER, an individual, }
12 Plaintiff, }
13 v. }
14 REDLINE RECOVERY }
15 SERVICES, LLC., }
16 Defendants. }

CASE NO. 2:10-cv-00724-RC

ANSWER TO COMPLAINT

Magistrate Judge: Hon. Rosalyn M.
Chapman

17
18 **ANSWER TO COMPLAINT**

19 COMES NOW Defendant REDLINE RECOVERY SERVICES, LLC
20 ("Defendant"), appearing for itself and for no other person, firm or entity, and files
21 its Answer to the Complaint of Plaintiff, TERESA PARKER ("Plaintiff"), an
22 individual, by admitting, denying and alleging as follows:
23

INTRODUCTION

24 1. Defendant admits that Count I of Plaintiff's Complaint attempts to
25 assert claims under the Fair Debt Collection Practices Act ("FDCPA"). Defendant
26 denies all remaining allegations contained in Paragraph 1 of Plaintiff's Complaint.

27 2. Defendant admits that Count II of Plaintiff's Complaint attempts to
28 assert claims under the Rosenthal Fair Debt Collection Practices Act ("RFDCPA").

1 Defendant denies all remaining allegations contained in Paragraph 1 of Plaintiff's
2 Complaint.

3 JURISDICTION AND VENUE

4 3. Defendant admits that this Court has subject matter jurisdiction in the
5 absence of Plaintiff's agreement. Otherwise, however, Defendant denies that this
6 Court is the proper venue to adjudicate Plaintiff's claims.

7 4. Defendant denies that it conducts business in California. Defendant
8 admits only that it attempts to collect unpaid accounts from persons located in
9 California.

10 5. Defendant denies the allegations contained in Paragraph 5 of Plaintiff's
11 Complaint.

12 6. Defendant denies the allegations contained in Paragraph 6 of Plaintiff's
13 Complaint.

14 PARTIES

15 7. Defendant admits that Plaintiff is a natural person. Defendant lacks
16 knowledge or information sufficient to form a belief as to the remaining allegations
17 contained in Paragraph 7 of Plaintiff's Complaint.

18 8. Defendant admits that Plaintiff owes an unpaid account. Defendant
19 lacks knowledge or information sufficient to form a belief as to the remaining
20 allegations contained in Paragraph 8 of Plaintiff's Complaint.

21 9. Defendant admits attempting to collect the unpaid account. Defendant
22 admits in certain circumstances it may be considered a debt collector under the
23 FDCPA. Defendant denies the remaining allegations contained in Paragraph 9 of
24 Plaintiff's Complaint.

25 10. Defendant admits it maintains an office in Amherst, Erie County, New
26 York and that it is a Georgia Limited Liability Company. Defendant denies the
27 remaining allegations contained in Paragraph 10 of Plaintiff's Complaint.

28 11. Defendant admits having employees, officers, and insurers, but denies

1 the allegations contained in Paragraph 11 of Plaintiff's Complaint.

2 **FACTUAL ALLEGATIONS**

3 12. Defendant admits that one of its phone numbers is 866-388-4208.

4 Defendant admits attempting to contact Plaintiff.

5 13. Defendant admits calling 661-361-2995. Defendant lacks knowledge
6 or information sufficient to form a belief as to the remaining allegations contained
7 in Paragraph 13 of Plaintiff's Complaint..

8 14. Defendant admits attempting to contact Plaintiff. Defendant lacks
9 knowledge or information sufficient to form a belief as to the remaining allegations
10 contained in Paragraph 14 of Plaintiff's Complaint.

11 15. Defendant lacks knowledge or information sufficient to form a belief as
12 to the allegations contained in Paragraph 15 of Plaintiff's Complaint.

13 16. Defendant lacks knowledge or information sufficient to form a belief as
14 to the allegations contained in Paragraph 16 of Plaintiff's Complaint.

15 17. Defendant admits that one of its phone numbers is 716-250-4857.
16 Defendant lacks knowledge or information as to form a belief as to the remaining
17 allegations contained in Paragraph 17 of the Plaintiff's Complaint.

18 18. Defendant lacks knowledge or information sufficient to form a belief as
19 to the allegations contained in Paragraph 18 of Plaintiff's Complaint.

20 19. Defendant lacks knowledge or information sufficient to form a belief as
21 to the allegations contained in Paragraph 19 of Plaintiff's Complaint.

22 20. Defendant admits the allegations contained in Paragraph 20 of
23 Plaintiff's Complaint.

24 **COUNT I**

25 **PLAINTIFF'S ALLEGATIONS THAT DEFENDANT VIOLATED THE FAIR**
26 **DEBT COLLECTION PRACTICES ACT**

27 21. Defendant denies the allegations contained in Paragraph 21 of
28 Plaintiff's Complaint along with its all subparts.

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22. Defendant denies the request in Plaintiff's prayer contained in Paragraph 22 of Plaintiff's Complaint.

23. Defendant denies the request in Plaintiff's prayer contained in Paragraph 23 of Plaintiff's Complaint.

24. Defendant denies the request in Plaintiff's prayer contained in Paragraph 24 of Plaintiff's Complaint.

25. Defendant denies the request in Plaintiff's prayer contained in Paragraph 25 of Plaintiff's Complaint.

26. Defendant denies the request in Plaintiff's prayer contained in Paragraph 26 of Plaintiff's Complaint.

COUNT II

PLAINTIFF'S ALLEGATIONS THAT DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

27. Defendant incorporates by reference the above paragraphs of this Answer as if fully stated therein.

28. Defendant denies the allegations contained in Paragraph 28 of Plaintiff's Complaint including all its subparts.

29. Defendant denies the request in Plaintiff's prayer contained in Paragraph 29 of Plaintiff's Complaint.

30. Defendant denies the request in Plaintiff's prayer contained in Paragraph 30 of Plaintiff's Complaint.

31. Defendant denies the request in Plaintiff's prayer contained in Paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the request in Plaintiff's prayer contained in Paragraph 32 of Plaintiff's Complaint.

33. Defendant denies the request in Plaintiff's prayer contained in Paragraph 33 of Plaintiff's Complaint.

34. Defendant denies all remaining allegations contained in Plaintiff's

1 Complaint not specifically admitted herein.

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State Cause of Action)**

4 1. Plaintiff's Complaint, and each cause of action contained therein, fails
5 to state facts sufficient to constitute a valid cause of action against Defendant.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 2. Defendant is informed and believes and based thereon alleges that
9 Plaintiff's Complaint, and each cause of action contained therein, or portions
10 thereof, is barred by the applicable statutes of limitations.

11 **THIRD AFFIRMATIVE DEFENSE**

12 **(Compliance with Statute)**

13 3. The conduct of Defendant at all times complied with all applicable
14 statutes, regulations and laws; accordingly, the Complaint and each purported cause
15 of action alleged therein against Defendant is barred.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Estoppel)**

18 4. As a separate, affirmative defense, the Complaint, and each cause of
19 action alleged therein against Defendant are barred by the conduct, actions and
20 inactions of Plaintiff, which amount to and constitute an estoppel of the claims and
21 any relief sought by the Complaint.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 **(Reasonableness and Good Faith)**

24 5. Defendant and its agents, if any, acted reasonably and in good faith at
25 all times material herein, based on all relevant facts and circumstances known by
26 them at the time they so acted, Defendant alleges that they acted lawfully and within
27 their legal rights, with a good faith belief in the exercise of those rights, and in the
28 furtherance of legitimate business purpose. Further, Defendant acted in good faith

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1 in the honest belief that the acts, conduct and communications, if any, of Defendant
 2 were justified under the circumstances based on information reasonably available to
 3 this answering Defendant. Accordingly, Plaintiff is barred from any recovery in this
 4 action.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Bad Faith Claims)**

7 6. The allegations and claims asserted in the Complaint have always been
 8 and continue to be frivolous, groundless and without merit as against Defendant.
 9 Plaintiff has brought this action against Defendant in bad faith.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Defendant May Recover for Plaintiffs' Bad Faith Claim)**

12 7. Plaintiff's Complaint and each purported cause of action alleged
 13 therein against Defendant were not brought in good faith and are frivolous.
 14 Therefore, the relief requested is precluded and Defendant is entitled to recover its
 15 reasonable expenses, including attorneys' fees, incurred herein as a matter of law
 16 pursuant to this Court's inherent authority pursuant to *California Code of Civil*
 17 *Procedure* sections 128.5 and 128.7, and pursuant to the California Rosenthal Act.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **(No Intentional or Reckless Conduct)**

20 8. As a separate, affirmative defense, Defendant contends that it did not
 21 engage in any conduct that was outrageous, intentional and malicious or done with
 22 reckless disregard with respect to Plaintiff. Defendant also alleges that it never
 23 engaged in any knowing, willful or fraudulent conduct with respect to Plaintiff.

24 **NINTH AFFIRMATIVE DEFENSE**

25 **(No Causation)**

26 9. Plaintiff is barred from any recovery or relief against Defendant
 27 because Defendant was not the actual or proximate cause of any of the damages, if
 28 any, alleged in the Complaint.

TENTH AFFIRMATIVE DEFENSE**(Mitigation of Damages)**

10. Plaintiff is not entitled to recover any damages, or any recovery awarded should be reduced by the amount of damages which reasonably could have been avoided, because Plaintiff failed to take reasonable steps to mitigate his damages with respect to the matters alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

11. Plaintiff is barred from maintaining the Complaint and each purported cause of action alleged therein against Defendant as a result of unclean hands with respect to the events upon which the Complaint and purported causes of action allegedly are based.

TWELFTH AFFIRMATIVE DEFENSE**(Waiver)**

12. The Complaint and each purported cause of action alleged therein against Defendant is barred by Plaintiff's own conduct, actions, omissions and inaction which amount to and constitute a waiver of such claims and any relief sought thereby.

THIRTEENTH AFFIRMATIVE DEFENSE**(Laches)**

13. Plaintiff is barred by the doctrine of laches from pursuing his Complaint and each purported cause of action alleged therein against Defendant by reason of their inexcusable and unreasonable delay in filing his Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE**(Actions Were Privileged and Justified)**

14. As a separate, affirmative defense, the Complaint, and each cause of action alleged therein against Defendant, is barred because Defendant was privileged and justified, by statute and by common law, in making the alleged

1 statements and representations, if any, including but not limited to statutes 15
 2 U.S.C. § 1692k(c), Civil Code §1788.12(e), and Civil Code § 47.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 **(Actions Were Proper)**

5 15. As a separate, affirmative defense, Defendant alleges that the alleged
 6 actions of Defendant were proper and did not violate any provisions of 15 U.S.C. §
 7 1692 et. seq. or Civil Code § 1788 et seq.)

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 **(Bona Fide Error)**

10 16. As a separate, affirmative defense, assuming *arguendo* that this
 11 Defendant violated a statute alleged in the Complaint, which presupposition the
 12 Defendant denies, such violation was not intentional and resulted from a bona fide
 13 error, notwithstanding the maintenance of procedures reasonably adapted to avoid
 14 any such error.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 **(Maintained Reasonable FDCPA Procedures)**

17 17. As a separate, affirmative defense, Defendant alleges that at all times
 18 alleged in the Complaint, Defendant maintained reasonable procedures created to
 19 prevent any type of intentional or negligent violations of the Fair Debt Collection
 20 Practices Act ("FDCPA").

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 **(FDCPA damages are limited)**

23 18. As a separate, affirmative defense, Defendant allege that if Plaintiff
 24 was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's
 25 damages are limited by 15 U.S.C. § 1692k(a)(1), § 1692k(a)(2)(A), § 1692k(a)(3)
 26 and 15 U.S.C. § 1692k(b)(1).

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28 ///

NINETEENTH AFFIRMATIVE DEFENSE

(Maintained Reasonable Rosenthal Act Procedures)

19. As a separate, affirmative defense, Defendant alleges that at all times alleged in the Complaint, Defendant maintained reasonable procedures created to prevent any type of intentional or negligent violations of the Rosenthal Act.

TWENTIETH AFFIRMATIVE DEFENSE

(Rosenthal Act damages are limited)

20. As a separate, affirmative defense, Defendant alleges that if Plaintiff were damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by Civil Code sections 1788.30 and 1788.32.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Declaratory Relief)

21. As a separate, affirmative defense, Defendant alleges that Plaintiff is not entitled to declaratory relief under the FDCPA and Rosenthal Act.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Venue is improper)

22. As a separate, affirmative defense, Defendant alleges venue is improper.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Arbitration Agreement)

23. As a separate, affirmative defense, Defendant asserts that Plaintiff's claims are or may be subject to an arbitration agreement requiring her to submit her claims to mandatory and binding arbitration. If so, Defendant will exercise its right to arbitration under the agreement, which is specifically enforceable pursuant to the Federal Arbitration Act, 9 U.S.C. Section 1, et. seq.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Plaintiff Has No Damages)

24. As a separate, affirmative defense, Defendant asserts that Plaintiff has

1 not been damaged; therefore, Plaintiff may not recover against this Defendant.

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 **(Reservation of Rights)**

4 25. Defendant reserves the right to amend its answer and claims herein by
5 adding additional parties, affirmative defenses, counterclaims, cross-claims, and/or
6 third party claims, as additional investigation, discovery or circumstances warrant.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Defendant prays for judgment as follows:

- 9 1. That Plaintiff take nothing by reason of her Complaint;
10 2. For judgment in favor of Defendant, and against Plaintiff;
11 3. For costs of suit and reasonable attorneys' fees incurred; and
12 4. For such other and further relief as the Court may deem just and proper.

13 DATED: March 22, 2010

CARLSON & MESSER LLP

14
15 By /s/ David J. Kaminski

16 David J. Kaminski
17 Stephen A. Watkins
18 Attorneys for Defendants,
19 REDLINE RECOVERY SERVICES,
20 LLC
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